

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

07 CIV. 3785

IRWIN FRANCHISE CAPITAL CORPORATION,

Plaintiff

v.

WINDRAM ENTERPRISES, INC.,

Defendant.

Civil Action No.
(Hon.

FILED
U.S. DISTRICT COURT
2007 MAY 14 P 3:03
S.D. OF N.Y. W.P.

JUDGE CONNER

NOTICE OF REMOVAL

Defendant Windram Enterprises, Inc., ("Windram"), pursuant to 28 U.S.C. § 1446, hereby files this Notice of Removal of this case based on diversity of citizenship from the Supreme Court of New York, Westchester County, where it is currently pending, to the United States District Court for the Southern District of New York, and respectfully shows the Court as follows:

1. Plaintiff Irwin Franchise Capital Corporation ("Irwin") filed a complaint in this civil action in the Supreme Court of New York, Westchester County on or about April 4, 2007. It then attempted to serve a summons and complaint on Windram on or about April 14, 2007. A true and correct copy of all process and pleadings in this action is annexed hereto as Exhibit A.

2. This action could have been originally filed in this Court pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between plaintiff Irwin and defendant Windram and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

3. This Notice of Removal is filed within thirty (30) days after receipt by any defendant of the initial pleading on which this action is based pursuant to 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a).

DIVERSITY OF CITIZENSHIP

4. Complete diversity of citizenship exists between the parties. Plaintiff Irwin is, and was at the time of the institution of this civil action, a corporation organized and existing under the laws of State of Indiana, as stated in paragraph 1 of the complaint. Its principal place of business is in New Jersey at 10 Paragon Drive, Montvale as identified at www.irwin.com/contact.htm.

5. Defendant Windram is, and was at the time of the institution of this civil action, a corporation organized and existing under the laws of the State of New York, with its place of business in Pawling, New York.

6. This suit is a civil action within the meaning of the acts of Congress relating to the removal of causes.

AMOUNT IN CONTROVERSY

7. The amount in controversy exceeds \$75,000, exclusive of costs and interest.

8. The general rule in this Court is that the amount in controversy is determined by the allegations in the complaint, Davenport v. Procter & Gamble Manufacturing Co., 241 F.2d 511, 514 (2nd Cir. 1957).

9. Here, Irwin's complaint alleges claims for damages of \$110,120.89, plus costs and interest.

CONCLUSION

10. A copy of this Notice of Removal will be promptly filed with the Clerk of the Supreme Court of New York, Westchester County, as provided by law, and written notice will be sent to Irwin's counsel.

11. Windram has not sought similar relief.

12. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

13. The allegations of this Notice are true and correct and within the jurisdiction of the United States District Court for the Southern District of New York.

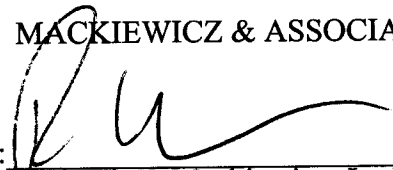
14. If any questions arise as to the propriety of the removal of this action, Windram respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

15. The undersigned is a member in good standing of the Bar of this Court.

WHEREFORE, Defendant Windram, by and through its counsel, respectfully requests that this action currently pending in the Supreme Court of New York, Westchester County, be removed therefrom to this Court.

Dated: Hoboken, New Jersey
May 10, 2007

MACKIEWICZ & ASSOCIATES, L.L.C.

By: 
Richard W. Mackiewicz, Jr., Esq. (RM 0863)

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Hoboken, New Jersey 07030
(201) 217-1500

Attorneys for Defendant Windram Enterprises, Inc.

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